

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ALPHONSE HARRIS	§	
VS.	§	CIVIL ACTION NO. 6:18cv547
BRYAN COLLIER, ET AL.	§	

REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Alphonse Harris, a former inmate of the Texas prison system, proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred for findings of fact, conclusions of law and recommendations for the disposition of the case.

On October 19, 2018, the Court issued a Deficiency Order in this case. Plaintiff was given thirty days from the receipt of the order to submit a completed application to proceed *in forma pauperis* and a properly certified *in forma pauperis* data sheet. (Dkt. #3). The order was mailed to Plaintiff at his last known address, which was a private address in San Antonio, Texas. On October 30, 2018, the letter containing the order was returned to the Court with the notation: "Return to Sender, Attempted – Not Known, Unable to Forward." As of today, Plaintiff has not provided the Court with a new address. He has failed to prosecute this case.

The exercise of the power to dismiss a case for failure to prosecute or obey a court order is committed to the sound discretion of the Court and appellate review is confined solely in whether the Court's discretion was abused. *Green v. Forney Eng'g Co.*, 589 F.2d 243 (5th Cir. 1979); *Lopez*

*v. Aransas Cnty. Indep. Sch. Dist.*, 570 F.2d 541 (5th Cir. 1978). Not only may a district court dismiss for want of prosecution upon motion of a defendant, but it may also, *sua sponte*, dismiss an action whenever necessary to achieve the orderly and expeditious disposition of cases. *Anthony v. Marion Cnty. Gen. Hosp.*, 617 F.2d 1164 (5th Cir. 1980).

Recommendation

It is therefore recommended that the complaint be dismissed without prejudice for want of prosecution. Fed. R. Civ. P. 41(b); Rule 41, Local Rules for the Eastern District of Texas.

Within fourteen (14) days after receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in the report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

**So ORDERED and SIGNED this 28th day of November, 2018.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE